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Supreme Court, U.S.

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JOSEPH F. SPANIOL, JR.
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NO. 89-369

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

DANIEL L. PARRISH, Petitioner

v.

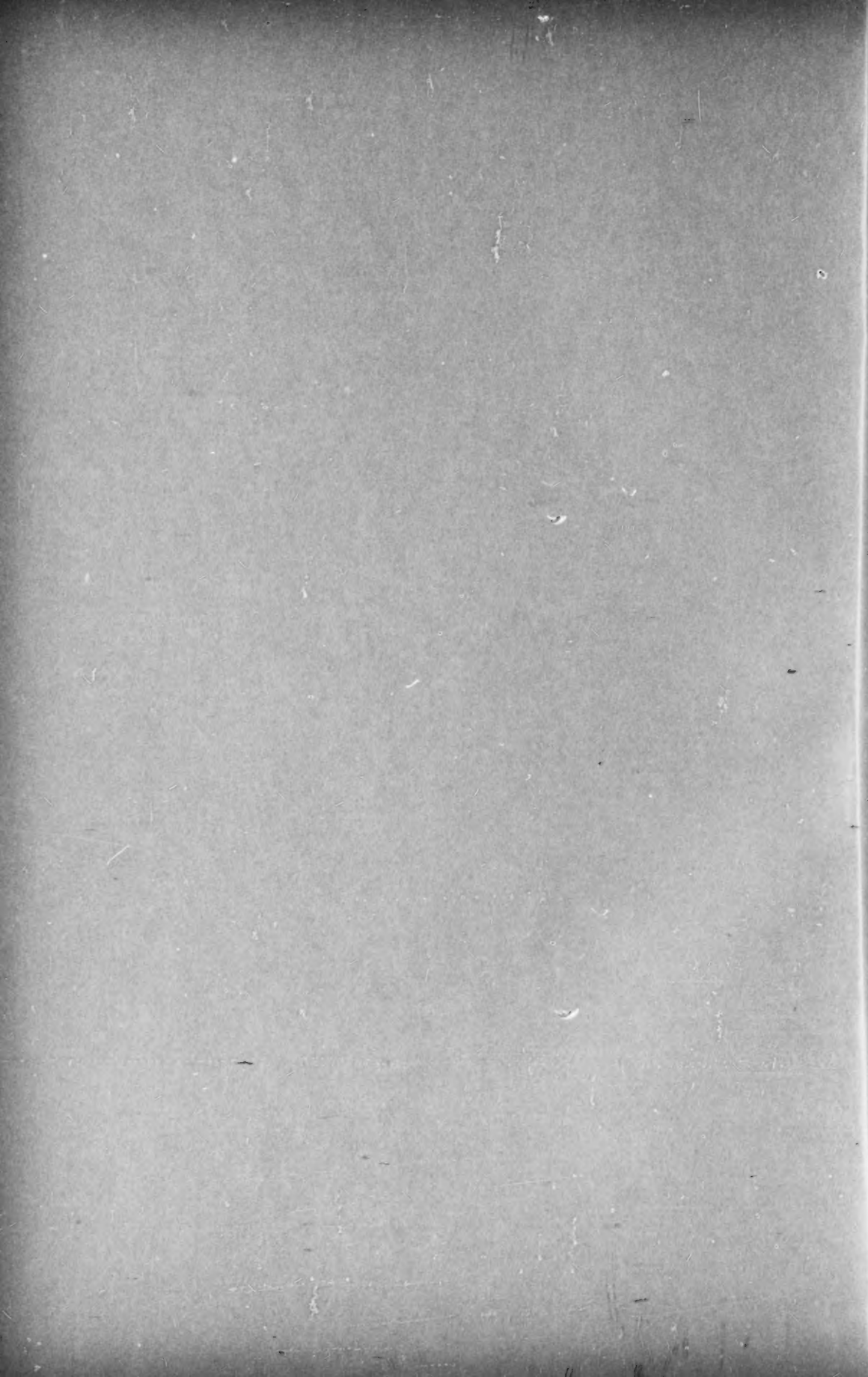
SHELVA P. JOURNIGAN, BRUCE G.
JOURNIGAN, T. YATES DOBSON, JR.,
JAMES W. NARRON, Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS
DOBSON AND NARRON

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Fourth Circuit erred in determining that the district court lacked subject matter jurisdiction over an action to determine the validity of a will and to contest the administration of a decedent's estate?

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JURISDICTIONAL GROUNDS

Petitioner, a Virginia resident, brought this action in federal court against four North Carolina residents. Jurisdiction was founded on diversity of citizenship. 28 U.S.C. §1332(a)(1982).

STATEMENT OF THE CASE

Petitioner's Complaint seeks compensatory and punitive damages stemming out of the Respondents' involvement with the probate of Petitioner's mother's will and the administration of her estate. Mr. Dobson, an attorney, drafted a durable power of attorney and a will for Petitioner's mother. The will left the bulk of the estate to one of Petitioner's siblings. Mr. Narron, an attorney, has represented Shelva Journigan in her capacity as executrix of the estate. Mr. Narron also represented the estate in the caveat proceeding heard in State court

during the pendency of this action.¹

On Petitioner's motion, the case was transferred from Virginia to the United States District Court for the Eastern District of North Carolina to avoid dismissal for lack of personal jurisdiction. The matter was then assigned to the Honorable James C. Fox. A status conference was scheduled for October 11, 1988, in Wilmington, North Carolina, where Judge Fox's chambers are located. Written notice to attend was given to all parties, but Petitioner refused to appear. Judge Fox, on his own motion, dismissed the action under F.R. Civ. P. 41 for this failure by Petitioner to prosecute his claims.

Petitioner appealed this ruling to the United States Court of Appeals for the

¹ The jury determined that the will was valid. Petitioner was a named party to the caveat proceeding.

Fourth Circuit. The Fourth Circuit affirmed Judge Fox's dismissal on grounds that the federal court lacked subject matter jurisdiction over Petitioner's claims. The Fourth Circuit modified the Order to reflect that the dismissal was without prejudice, pursuant to 28 U.S.C. §2106 (1982).

Petitioner filed a petition for rehearing and suggestion on rehearing en banc with the Fourth Circuit, which was denied on June 5, 1989. Petitioner then filed a Petition for Writ of Certiorari with the United States Supreme Court.

SUMMARY OF ARGUMENT

Matters of probate and estate administration are beyond the subject matter jurisdiction of the federal courts. The Complaint requests relief arising out of the probate of a will and administration of an estate and these matters fall within the exclusive

jurisdiction of the North Carolina courts. The Fourth Circuit correctly dismissed the Complaint for lack of subject matter jurisdiction. In addition, Petitioner's claims against Mr. Dobson and Mr. Narron are frivolous and will be dismissed if this case is heard on the merits by a Court of competent jurisdiction.

REASONS WHY THE PETITION
SHOULD BE DENIED

1. Federal Law is Clear that Matters Regarding the Validity of a Will and the Administration of an Estate are Beyond Federal Subject Matter Jurisdiction.

The Supreme Court reserves its Writs of Certiorari to reach cases that present matters of gravity and general importance. Fields v. United States, 205 U.S. 292, 296, 27 S. Ct. 543, 51 L. Ed. 807 (1907). The number of cases this Court can address each year is limited. Thousands of cases are presented for review posing issues affecting the welfare of all United States citizens. This is not such a case.

Writs of Certiorari are issued to resolve conflicts between state and federal courts or among different federal courts. Sup. Ct. R. 17. The law has long been settled that, in diversity cases, jurisdiction over matters of probate and estate administration rests exclusively with state courts. Markham v. Allen, 326 U.S. 490, 494, 66 S. Ct. 296, 90 L. Ed. 256 (1946); Reiss v. Reiss Foundation, 610 F.2d 471, 475 (7th Cir. 1979).

Petitioner's Complaint alleges that undue influence and lack of testamentary capacity invalidate his mother's will. See Parrish v. Journigan, No. 88-2945, slip op. at 3 (4th Cir. May 4, 1989). The validity of the will is within the exclusive jurisdiction of the court in the county where Petitioner's mother resided at the time of her death. Markham, 326 U.S. at 494. See N.C. Gen. Stat. §§28A-2-1, 28A-3-1, 31-32 (1984 & Supp. 1988)

(discussing jurisdiction over probate matters); In Re Estate of McAdamee, 291 N.C. 386, 395, 230 S.E.2d 541, 549 (1976) (clerk has exclusive original jurisdiction over probate); Walters v. Baptist Children's Home of N.C., Inc., 251 N.C. 369, 377, 111 S.E.2d 707, 713 (1959) (clerk's probate is conclusive unless overturned on appeal to Superior Court). The Complaint also alleges that the executrix of the estate and the attorney representing her have acted improperly in conducting the estate's affairs. See Parrish v. Journigan, No. 88-2945, slip op. at 3 (4th Cir. May 4, 1989). This issue, too, is beyond federal jurisdiction. Markham, 326 U.S. at 494.

The issues that Petitioner can raise have been litigated repeatedly, and in each case the reviewing court has determined that it lacked subject matter jurisdiction. See, e.g., Smith v. Smith,

272 F. Supp. 397, 399-400 (W.D. Va. 1967) (determination whether stock is part of decedent's estate is outside federal jurisdiction). See also Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33, 45, 30 S. Ct. 10, 54 L. Ed. 80 (1909) (right to accounting is matter for state probate court).

In Blackney v. Blackney, 664 F.2d 433 (5th Cir. 1981), six beneficiaries filed a diversity action, claiming that a state probate judgment was invalid because the testator lacked the capacity to make a will and because fraud existed in the estate administration. Id. at 433-34. The district court dismissed the Complaint for lack of subject matter jurisdiction and the plaintiffs appealed. Id.

The Fifth Circuit ruled that plaintiffs' claim concerning the testator's capacity went to the validity of the will and was outside federal

jurisdiction. Id. at 434. The remaining claims concerned matters within the scope of the probate proceeding and had already been adjudicated by the probate court.

Id. The Fifth Circuit ruled that the federal court lacked subject matter jurisdiction over these claims. Id.

The Fourth Circuit's decision is in accord with decisions of the numerous Circuits that have addressed this issue. Granting a Writ of Certiorari here will preclude the Court from addressing important issues, only to review and apply a well-settled jurisdictional doctrine.

2. Petitioner's Claims Against
Mr. Narron and Mr. Dobson
are Meritless.

Petitioner has sued Mr. Dobson for drafting a valid will and a valid power of attorney that Petitioner, a disgruntled heir, does not like. North Carolina does not recognize a claim against an attorney for following his client's directions in

drafting documents. See Hodges v. Carter, 239 N.C. 517, 520, 80 S.E.2d 144, 145-46 (1954) (attorney is liable only for failure to exercise reasonable care or his best judgment on behalf of his client). North Carolina also does not recognize a claim against an attorney representing an estate for maximizing estate assets, although a disgruntled beneficiary disagrees with the decisions made. It is the executrix, not the beneficiaries, who decides how to manage estate assets. See N.C. Gen. Stat. §28A-13-3 (1984 & Supp. 1988) (listing duties and powers of executrix). Mr. Dobson and Mr. Narron have competently represented their clients. Petitioner's claims against them are baseless. This suit does not merit Certiorari to prolong claims that will be dismissed below. Mr. Dobson and Mr. Narron should not be required to litigate Petitioner's baseless claims further.

3. Petitioner Could Have Contested
the Will and the Estate
Administration in a Proper Forum.

Petitioner had his opportunity for a day in court. He was a named party to the caveat proceeding filed by his brothers and sisters in Johnston County Superior Court. See, e.g., Petitioner's Questions Presented Nos. 15-16, 42, 53. Petitioner opted not to appear at that proceeding, although the Johnston County courts obtained jurisdiction over this matter three months before Petitioner filed his Complaint.² Further, all accountings

² North Carolina assumed jurisdiction over the estate, the res of Petitioner's Complaint, when the will was submitted for probate on January 25, 1988. Petitioner sought relief from the federal court during the pendency of the State action that necessarily would have interfered with the State's possession of the estate. This is another reason to dismiss. See Princess Lida of Thurn and Taxis v. Thompson, 305 U.S. 456, 466, 59 S. Ct. 275, 83 L. Ed. 285 (1939) (federal court has no jurisdiction over res in possession of state court); Cottingham v. Hall, 55 F.2d 664, 665 (4th Cir. 1932) (same).

must be approved by the Johnston County Clerk of Superior Court and fees, including attorneys fees paid, must be approved by the Clerk. See N.C. Gen. Stat. §§28A-21-1, 28A-21-2, 28A-23-3(e) (1984). The federal court has no jurisdiction to exercise those powers vested, by statute, exclusively with the Clerk. Petitioner could have contested these issues in Johnston County.

To fix liability in Petitioner's lawsuit, a court or jury must determine whether Petitioner's mother's will is valid and whether her estate was administered properly. Only the North Carolina courts can rule upon these issues in the context that Petitioner presents them. Petitioner's action directly interferes with estate administration; therefore, his claims were properly dismissed by the Fourth Circuit.

CONCLUSION

The Petition for Writ of Certiorari presents neither a special nor important issue of law. Petitioner asks this Court only to review his self-serving account of the facts surrounding his mother's death. This Court will not grant a Writ of Certiorari merely to review evidence or discuss specific facts. United States v. Johnson, 268 U.S. 220, 227, 45 S. Ct. 496, 69 L. Ed. 925 (1925). The law concerning federal subject matter jurisdiction is clear and has been consistently and fairly applied in this case. This Court should refuse to issue its Writ of Certiorari and should allow the Fourth Circuit's opinion to stand.

Respectfully submitted, this the 21st
day of September, 1989.

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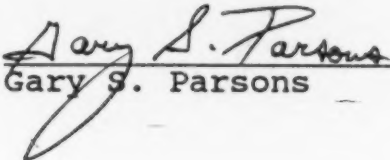
CERTIFICATE OF SERVICE

The undersigned attorney for Respondents Dobson and Narron hereby certifies that on this day three copies of the foregoing Brief in Opposition of Respondents Dobson and Narron was served upon the parties in this action by depositing them in an appropriate wrapper, in a United States post office or mailbox, with first-class postage prepaid, and addressed as follows:

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This the 21st day of September, 1989.



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